IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHNNY BERNAL, on Behalf of)
Himself and Others Similarly)
Situated,)
)
Plaintiff(s),)
)
VS.)CA NO. SA-07-CA-0695-XR
)
VANKAR ENTERPRISES,INC.)
d/b/a BABCOCK BAR, CHICAGO)
BAR, INC., and TDS)
ENTERTAINMENT, INC. d/b/a)
DIXIE'S COUNTRY BAR,)
)
Defendant(s).)

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ORAL DEPOSITION OF

PATRICK KARAM

JULY 16, 2008

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ORAL DEPOSITION of PATRICK KARAM, produced as a witness at the instance of the Defendants, and duly sworn, was taken in the above-styled and numbered cause on the 16th day of July, 2008, from 11:00 a.m. to 1:14 p.m., before Judith A. Stewart, CSR, in and for the State of Texas, reported by machine shorthand, at the offices of EDWARD L. PINA & ASSOCIATES, P.C., 8118 Datapoint Drive, San Antonio, Texas pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Exhibit A

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A. It requires boundaries --

MR. PINA: Objection. Again, calls for a legal conclusion from a lay witness.

Q. (BY MR. BURCH) You can answer, sir.

A. It requires boundaries on pay standards for total hours worked.

Q. What, if anything, does the Fair Labor Standards Act require in your understanding, sir?

MR. PINA: Same objection. It calls for a legal conclusion from a lay witness.

A. That would be it.

Q. (BY MR. BURCH) Okay. What are the boundaries on pay standards for total hours worked?

A. 40. And then after 40, it changes.

Q. What does it change to?

A. Per week. It changes per week after 40 hours.

Q. Okay. We're missing each other. How does it change after 40 hours?

A. Then the pay rate has to change to time and a half.

Q. Okay. And how long have you known that after 40 hours employees are supposed to be paid time and a half?

A. At least four years.

Q. And you've known for at least four years that employees must receive a minimum amount for each hour worked?

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rate or did they work for tips? What did you do?
A. I paid them $2.13 an hour plus tips.
Q. So it's safe to say at least as far back as 2000 you knew you had to pay at least $2.13 an hour to a server who was working, right?
A. Yes.
Q. Now, $2.13 is less than what you call the general minimum wage; is that right?
A. Yes. Yes.
Q. And I guess that you rely on gratuities to make up the difference between the $2.13 and the general minimum wage at your bars?
A. Yes. Yes.
Q. Are there -- are there any other requirements beside paying $2.13 an hour that allow -- that are required to allow your bars to pay $2.13 an hour instead of the general minimum wage?
A. Would you rephrase that question, please?
Q. Sure. There's a general minimum wage that is higher than $2.13 an hour, right?
A. Yes.
Q. You believe that you can pay $2.13 an hour and rely on tips to make up the difference between $2.13 and the general minimum wage, true? You believe that?
MR. PINA: Objection.

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requirements that you're aware of other than you've got to pay them at least $2.13 and they have to make at least the general minimum wage?

A. No.

Q. Do you follow the same pay policies with respect to servers at all of the bars, Dixie's, Babcock, Chicago, New York Bar and Boston Pub?

A. Yes.

Q. And are those -- were those policies established by you?

A. Yes.

Q. Are you capable of enforcing those policies at each of these bars?

A. What does that mean?

Q. At my firm, right, my firm is Bruckner Burch, if I say, "This is the policy," and somebody doesn't follow it, I can do something about it. I can write them up. I can go talk to them. I can discipline them. I can suspend them. I can fire them if I really feel mean. I can enforce the policies at Bruckner Burch. Can you enforce the policies at your bars?

A. Yes.

Q. That seems pretty easy to me, right, you're president of all these bars, true?

A. Yes.

and I would approve or disapprove it.

Q. Did she ever fire anybody?

A. No.

Q. Who is Manny?

A. Manny was the manager, a manager, that worked for Broadway Bar.

Q. Okay. Did Manny also manage any of the other bars?

A. Manny was a person that worked for me at Broadway Bar that I tried to train to integrate to run all of the -- my entire operation, to place a manager in all of the bars, and it didn't work out.

Q. What is Manny's last name? Hispanic gentleman?

A. I don't remember.

Q. Okay. Manny's no longer with you; is that right?

A. No.

Q. No, he is still with you?

A. No, he's not with me.

Q. Okay. Did Manny have the authority to hire and fire?

A. Only at Broadway Bar.

Q. Has there ever been a position at your bars called happy hour manager?

A. No.

Q. How about nighttime manager?

A. No.

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A. Around $9 an hour.
Q. Do any of the doormen get paid less than the general minimum wage?
A. No.
Q. How about the barbacks, how are they paid?
A. $2.13 an hour.
Q. Okay.
MR. PINA: Plus tips?
A. Plus tips.
Q. (BY MR. BURCH) The barbacks get $2.13 an hour plus tips?
A. Plus tips.
Q. Right. What is Bar Staff Management, Inc.?
A. It's a payroll company and the management company for the bars.
Q. All the bars?
A. Yes.
Q. Do all the paychecks for all the people at all the bars come from Bar Staff Management, Inc.?
A. Yes.
Q. Who owns Bar Staff Management, Inc.?
A. I do.
Q. Does Bar Staff Management, Inc. provide payroll services to any bars that you don't own?
A. No.

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cash register shortages or sales that are not entered in -- INT -- the computer at every bar I am assigned to work."

Do you see that?

A. Yes.

Q. Is that true?

A. This is an extension of the same --

Q. I hear you.

A. -- disposition.

Q. Tell me if that statement is true or false.

A. That statement is -- that statement is true.

Q. And I notice it says in there: "....entered in the computer at every bar I am assigned to work." So I guess Johnny Bernal was subject to being assigned to work at any bar; is that right?

A. Yes.

Q. If you say, Today you're over at Chicago Bar, that's where he goes, right?

A. Yes.

Q. If there is a cash register shortage while an employee is working, that employee can have either their pay or their tips docked for that shortage at your bars; isn't that true?

A. Yes.

Q. Tell me how the tip pool works at your bars.

MR. LOPEZ: Objection, form.

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A. You -- what happens at the end of the night?
Q. (BY MR. BURCH) I guess. I don't know when they do the tip pooling.
A. At the end of the night, all the credit card receipts are tabulated.
Q. Okay.
A. For tips.
Q. Okay.
A. All the cash is pooled together and added up and then distributed equally amongst the players.
Q. Okay. So that's the only thing that happens, you total here's how much we have in credit card receipts, here's how much we have in cash, let's split it up amongst the people that are working?
A. Right, and then the distribution occurs.
Q. Huh?
A. And then the distribution occurs.
Q. Okay. So there's no, for example, 4 percent charge for this?
A. You have to deduct for the -- whatever the credit card expense is.
Q. Okay. And that's what I'm trying to figure out, is tell me --
A. Okay. All right.
Q. -- tell me there is some amount that is left on

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credit cards and in cash as tips; is that right?
A. Yes. That's correct.
Q. Okay. And then that's what we'll call the pool, I guess.
A. Okay. Okay. The total tip amount.
Q. The total tip amount.
A. The total tip amount. Okay.
Q. From the total tip amount, what happens to that money, everything that's deducted from it and every person that it goes to?
A. There's 5 percent taken out -- there's a 5 percent fee taken out, general fee taken out, from the tip -- the total tip pool.
Q. Okay.
A. And then there's a fee taken out for whatever the credit cards were, the credit card expense.
Q. And how is that amount calculated?
A. It's 4 percent, which is what -- more or less what credit card -- what the credit card expense is.
Q. Okay. 4 percent of what?
A. Of the total tips.
Q. Of all the tips including --
A. No, no, just the credit card tips.
Q. Okay.
A. 4 percent of the credit card tips, whatever they

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are.

Q. 4 percent of the credit card tips. 5 percent comes out of the general --

A. Correct.

Q. -- the total tip amount?

A. That's correct. The total amount of tips.

Q. Right. So if there were $50 in credit card tips, $50 in cash tips, it would be 5 percent of $100?

A. That's correct. It would be 5 percent of $98.

Q. Why 98?

A. Because they would lose 4 percent of the 50 bucks.

Q. Oh, okay. So the 4 percent comes off the top, so to speak, and then the 5 --

A. Yes. It's just a -- it's a courtesy that we provide to the employees.

Q. Okay. So let's stick with that hypothetical, right, and let's say it's a slow night. There's 50 bucks in credit card tips, there's $50 in cash tips. We have 100 bucks. The first thing we do is for the credit card tips, first thing is we deduct 4 percent for the credit card charges; is that right?

A. Yes.

Q. That leaves us with $48.

A. Yes.

Q. Right? We take that $48 and we add it to the $50

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in cash that we have.

A. Yes.

Q. Okay. That leaves us with $98.

A. Yes.

Q. We then take 5 percent of that for the general fee, right?

A. No. We take 5 percent of the total sales for the general fee.

Q. Okay. So does the 5 percent include the amount of credit card tip or just the amount of credit card liquor ring? Do you understand what I'm saying?

A. Neither. Neither.

Q. Neither. Okay.

A. The 5 percent, it reflects total sales.

Q. Okay.

A. For the night.

Q. And I hear you, but I guess does total sales include the amount that was left as a tip on a credit card?

A. Oh, no.

Q. Okay.

A. No.

Q. Okay. So if there was, you know, a $40 tab, a $10 tip --

A. Only the $40 counts.

Q. Would count towards the sales. Okay.

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So sticking with our earlier example, right, we've now got 98 bucks left in tips. We would figure out what the total sales were for that night, and 5 percent of that amount would be deducted from the 98; is that right?

A. Yes.

Q. What is the -- what is the general fee? What is that?

A. It's a tip pool that is distributed amongst lead bartenders and staff.

Q. Who is the staff?

A. All employees.

Q. All employees. Barbacks, doormen, servers?

A. No.

Q. Okay. Who?

A. Just servers. Just servers.

Q. Well, the servers are already about to divvy up what's left, right? I mean, what -- after we take out this 5 percent, right, and let's call it 8 bucks, right, we're left with $90 in tip pool money. That's going to get divided up amongst the servers.

A. Correct.

Q. Okay. So this 5 percent can't be for the servers, can it?

A. It's -- yes. It's redistributed to the servers at the end of a certain period of time.

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Q. So you hold onto it?
A. Yes.
Q. How long do you hold onto it for?
A. It depends, but sometimes a week, sometimes two weeks, sometimes 30 days.
Q. Why?
A. Because in the bar industry --
Q. Uh-huh.
A. -- the bar industry is much like a movie.
Q. Uh-huh.
A. And so staff often gets credited for extra kinds of work that they do.
Q. Uh-huh.
A. And so that residual --
Q. How does that make it like a movie?
A. Because it's all integrated together.
Q. Uh-huh.
A. Everything's integrated together in the business.
Q. Uh-huh.
A. Everybody depends on everybody to execute well in the bar industry.
Q. Okay. So you withhold this 5 percent --
A. Yes.
Q. -- right? And it is --
A. Redistributed after a period of time to lead

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A. I do.

Q. And how do you account for that amount? How do you keep track of how much you got and how much you paid out and who it went to?

A. I don't keep account. I just distribute it.

Q. So 5 percent of the tip pool, total tip pool money, after credit card comes to you, right?

A. Yes.

Q. Is that money in cash?

A. Yes.

Q. Is there an envelope or anything that comes in it that says here's how much I'm giving to Patrick today?

A. No.

Q. And you hold onto it until you think it's appropriate to redistribute it?

A. That is correct.

Q. But when you hand it back out, you don't say, okay, here's 50 bucks for you. Here's 100 bucks for Diego. Rex, you suck, so there's five bucks for you. You don't do that right? You don't keep a record?

A. Oh, right. No, I don't.

Q. You do hand out the money?

A. I do hand out the money.

Q. Right, but you don't keep track of it?

A. No, I don't keep track of it.

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Q. If we wanted to go back and test and make sure that 5 percent that's held actually gets distribute and who it got distributed to, is there any way we could do that?

A. No.

Q. Are you required by the wage and hour laws under your understanding to keep any particular kinds of payroll records?

A. Yes.

MR. PINA: Objection.

Q. (BY MR. BURCH) What payroll records is it your understanding that you're required to keep?

A. I'm required to keep the total hours logged in by all servers. I'm required to keep bank records of all checks issued. I'm required to keep all tax reports that are required to be filled out.

Q. When you do withholding on an employee's pay, are you only supposed to withhold on the $2.13 that you pay them or the hourly wage that you pay them, or are you supposed to withhold based on the $2.13 that they get and the total amount of tips that they receive?

A. Okay. All right. If I'm withholding for the employer's part --

Q. Uh-huh.

A. -- I have to withhold 100 percent of the employer's part of all the tip declarations as well as all the whatever

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Q. Did Shelby ever make schedules?
A. I'm sure she did.
Q. What was Shelby's position?
A. She was lead bartender as well.
Q. What bar? Bobby would like to know what bar.
A. Chicago Bar.
Q. Chicago Bar. At the Babcock Bar, who was the lead bartender for most of 2007?
A. Paul Neafie, probably.
Q. And how about Dixie's?
A. Dixie's varied between several people.
Q. Who are they?
A. I don't know.
Q. Who's one of them?
A. Melissa.
Q. Do you know Melissa's last name?
A. I don't.
Q. Do you know any of the other ones?
A. I don't.
Q. How do you explain to employees who are hiring on with your bars how they'll be paid?
A. I just assume that the -- I don't know. I don't.
Q. Okay. You just figure most of these people have had some experience in the bar industry before, they know what's up?

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MR. PINA: Can we have a time reference for that?

Q. (BY MR. BURCH) Over the past four years.

A. My answer stays the same. It just -- I just assume they know, you know.

Q. Right. You told me that most of the people that you hire have had some experience in the restaurant industry.

A. Right.

Q. Right?

A. Yes.

Q. So you figure they probably know --

A. Yes.

Q. -- how it works, right?

Does anybody else at your bars attempt to inform people how they'll be paid?

A. I don't know.

Q. Is there anybody else that has the responsibility of informing employees how they'll be paid at your bars?

A. No. No.

Q. So Mr. Neafie was the lead bartender at Chicago Bar, true?

A. No.

Q. No? Where?

A. At Babcock Bar.

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envelopes?

A. No.

Q. Are they in envelopes? Is the money in envelopes?

A. Okay. I don't know.

Q. When you get it, how is it?

A. I get it in a bank bag usually.

Q. Separated by envelopes or one big bag?

A. No, just one bank bag.

Q. Okay. That's all the bars lumped together?

A. Yes.

Q. Who decides how that money will be distributed?

A. I do.

Q. And how do you make that determination?

MR. LOPEZ: Objection.

A. Based on my perception of production.

Q. (BY MR. BURCH) Do you count the money distributed from that 5 percent when you're calculating the taxes that are owned on an employee?

A. No.

Q. Do you consult with anybody prior to --

A. No.

Q. -- deciding how to divvy up that 5 percent?

A. No.

Q. Your bars, you'll decide?

A. Yes.